IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 645 OF 2005

Mr. B.S. Panchmatia & Ors. .. Petitioners.

vs.

Bonanza Pharmaceuticals

Ltd.,etc. .. Respondents.

Mr. H.V. Chande for petitioner.

Ms. Parvathy Kaushik for company.

CORAL : S.U.KAMDAR, J.

DATE : 18th MARCH, 2005.

P.C.

1. The present petition was allowed by this Court on July 15, 2004 and the company was wound up. On an application for restoration the said order dated 15.7.2004 was set aside and the petition was placed back for hearing and final disposal. I have heard the parties. Affidavit in reply has been filed by the company inter alia disputing and denying the liability.

2. The claim in the winding up petition is for a sum of Rs. 4,20,000/- and the said claim is disputed by the company. The dispute purportedly

raised in the said petition is that the petitioner has played a fraud on the respondent company and has suppressed various material. It has been contended that the petitioner has failed to bring to the notice of this Court that pursuant to the arrangement arrived at between the parties the entire amount has been received by the petitioner. It has been further contended that the practice which was prevailing between the parties was that as soon as cash was paid by the respondent to the petitioner the post-dated cheque/bank hundies/blank signed letter heads were marked cancelled and returned to the company. It has also been contended that the documents which were executed in blank and handed over to the petitioner were misused by the petitioner. It is contended that in the aforesaid circumstances, the petition is not maintainable.

3. It is also contended that the cheques on the basis of which the claim for the sum of Rs. 4,20,000/- is raised is a fabricated and false cheque and was signed in blank. It was therefore, contended that the claim made in the present petition is not maintainable. It has also been contended that a false case was filed before the Andheri Metropolitan Court. It has been contended that the petitioner has not come to this Hon’ble Court with clean hands thus petition should be dismissed. Thereafter it is contended that the

company is having huge turn over of Rs. 3.6 crores and, therefore, the company should not be wound up. The whole transaction of amount lent and advanced is also sought to be denied. In the aforesaid circumstances, it has been contended that the claim of Rs. 4.2 lacs is fabricated claim and the present petition should be dismissed.

4. The learned counsel appearing for the petitioner has brought to my attention that the earlier transactions were of loan lent and advanced by different family member of the petitioner against the various bills of exchange. These bills of exchange were not honoured on its due dates. In the aforesaid circumstances, on 9.8.1995, a cheque of Rs. 4,20,000/- dated 9.10.1995 was forwarded which was in discharge of liabilities payable by the company to the petitioner under the aforesaid Bills of Exchange. It was stated that the said cheque was issued as a blank cheque towards the loan liabilities payable to the petitioner, his family members and friends and the company requested to the petitioner to withdraw all the cases filed by the petitioner against the Bonanza Pharmaceuticals Limited in Andheri Court. The said letter dated 9.8. 1995 is not disputed by the company. Thereafter it seems that the said cheque was dishonoured as the company was not in a position to pay the amount. Thereafter a M.O.U. dated

30.5.1997 was executed by and between the parties in which they have forwarded to the petitioner 10 cheques of Rs. 42,000/- each in lieu of the said dishonoured cheque of Rs. 4,20,000/-. The said MOU further states that the said cheques are issued in full and final settlement and the criminal case filed should be withdrawn. It has also been stated therein that on the said cheques being encashed the petitioner has agreed to withdraw the said case, and hand over the bill of exchange, etc. duly cancelled to the respondent company herein. In fact the said agreement also mentioned that in an event if the cheque is dishonoured by the company, then the petitioner will be entitled to receive the balance amount as also interest on the said amount.

5. It is not in dispute that the said memorandum of understanding was executed in 1997. It is also not in dispute that the said cheques have been issued in pursuance of the said MOU. In fact according to the petitioner three cheques of Rs. 42,000/- each were encashed. However, it is an admitted position that the balance seven cheques have not been encashed. However, the learned counsel for the respondent company contends that the balance amount is not due and payable by the company to the petitioner. It is contended that the said cheques are fraudulent and are issued in blank by the respondent company. The signature on these

cheques are not disputed by the person concerned. It is next contended that the shares were handed over in 1992 to the petitioner and the petitioner has received the amount of loan lent and advanced by way of the sale proceeds of the said shares and, therefore, nothing is due and payable thereby contended that under the MOU the petitioner was liable to return the said shares but instead of returning the said shares the petitioner has preferred to sale the same and realise its claim. I am not able to accept any of the aforesaid contentions. Firstly because the 10 cheques are issued in exchange of the earlier cheque of Rs. 4,20,000/- which was already dishonoured. Secondly the said cheque of Rs. 4,20,000/- was sent along with the covering letter dated 9.8.1995 which indicates that neither the said cheques was in blank nor the said cheque was undated. Thirdly, the MOU records the number of the cheque, the date of the cheque and the amount of which each of the cheque has been issued. It has been contended that on the payment of Rs. 4,20,000/- the company was liable to return the shares which have been deposited as far back as in 1992. I am not inclined to accept the aforesaid contention.

6. The company was directed to deposit a sum of Rs. 2,50,000/- while restoring the petition in this Court which has been deposited and even if the said

amount is taken into consideration still there is substantial amount outstanding. In view of the aforesaid position it is clear that company is unable to discharge its liability towards the claim of the petitioner even at this stage. In the aforesaid circumstances, I am left with no alternative but to wind up the company. The petition is accordingly made absolute in terms of prayer clause (a). Liquidator to take possession forthwith.

7. At this stage, the learned counsel for the respondent company on instructions makes a statement that they are ready and wiling to make payment of the balance amount of Rs. 55,000/- which is payable after adjustment of the amount of Rs. 2,50,000/- which is deposited by the Company in this Court and further an amount of Rs. 45,000/- towards the interest claim within a period of four weeks from today. In an event if such an amount of Rs. 1 lac is paid by the company to the Petitioner, the aforesaid order of winding up not to come into operation and the petition to stand dismissed. If the amount is not paid within the aforesaid period the order to come into effect immediately and to be implemented by the liquidator. The petitioner is at liberty to withdraw Rs. 2,50,000/- deposited with the office of the Prothonotary and Senior Master with interest accrued thereon.